

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BILLY G. ASEMANI,

Plaintiff,

v.

**UNITED STATES VICTIMS
OF STATE SPONSORED
TERRORISM FUND,**

Defendant.

**Case No. 2:21-cv-4098
JUDGE EDMUND A. SARGUS, JR.
Magistrate Judge Kimberly A. Jolson**

ORDER

This matter is before the Court on the September 8, 2023 Report and Recommendation issued by the Magistrate Judge. (R&R, ECF No. 85.)

On March 15, 2023, this Court granted Defendant United States Victims of State Sponsored Terrorism Fund's motion to dismiss Plaintiff Billy G. Asemani's action and entered judgment. (ECF Nos. 67, 68.) Mr. Asemani timely appealed (ECF No. 69), and received a few extensions to file his application to proceed *in forma pauperis* (ECF Nos. 78, 82). On August 1, 2023, Mr. Asemani filed his Motion for Leave to Appeal *in forma pauperis* (IFP Motion, ECF No. 84), and the Magistrate Judge issued the instant Report and Recommendation, recommending that because Mr. Asemani is a "three striker,"¹ he pay the full \$505 appellate

¹ 28 U.S.C. § 1915(g) provides: "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

filing fee within 30 days of the Court adopting the Report and Recommendation. (R&R, PageID 544 (citing 28 U.S.C. § 1915(g)).) Mr. Asemani timely objected. (Obj., ECF No. 86.)

Mr. Asemani's appeal was docketed in the United States Court of Appeals for the Sixth Circuit on June 29, 2023. *In re: Billy Asemani*, Case No. 23-3540 (6th Cir. June 29, 2023). While Mr. Asemani was receiving extensions on his IFP Motion in the District Court, his appeal proceeded. In early July, in response to a letter sent to the Sixth Circuit by Mr. Asemani, the Circuit Court clarified which forms Mr. Asemani needed to fill out if he wished to proceed *in forma pauperis*. *Id.* at ECF Nos. 3, 4. Mr. Asemani wrote another letter, to which the Circuit Court again replied, directing him to either pay the \$500 filing fee or fill out the Sixth Circuit's form Motion for Pauper Status. *Id.* at ECF Nos. 7, 8. The Circuit Court warned Mr. Asemani that his "[f]ailure to pay the fee or submit a motion for IFP to this Court will result in the appeal being dismissed for want of prosecution" and set a deadline of August 31, 2023, by which to do so. *Id.* at ECF No. 8 (emphasis in original). When Mr. Asemani did neither, the Sixth Circuit dismissed his case for want of prosecution about a month later. *Id.* at ECF No. 9.

The Court therefore **DENIES as moot** Mr. Asemani's IFP Motion. (ECF No. 84.) Mr. Asemani's objection is also **moot** and therefore **OVERRULED**. (ECF No. 86.) The Clerk is **DIRECTED to TERMINATE** the Report and Recommendation. (ECF No. 85.)

IT IS SO ORDERED.

11/21/2023
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE